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Supreme Court of the United States

October Term, ~~1948~~ 1949

No. ~~[redacted]~~ 54

UNITED STATES OF AMERICA, *EX REL.*
ELLEN KNAUFF,

Petitioner,

against

W. FRANK WATKINS, District Director of Immigration and Naturalization Service,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF

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W. FRANK WATKINS, District Director of Immigration and Naturalization Service,

Respondent.

PETITION FOR WRIT OF CERTIORARI

Proceedings and Opinions Below

Petitioner prays for a writ of certiorari to review the decree hereinafter described of the United States Court of Appeals for the Second Circuit, which decree was made and entered on March 11, 1949.

The petitioner applied for admission to the United States as a war bride (17),* but was excluded therefrom by order of the Attorney General (18). No reasons for such exclusion were stated when this decision was communicated to petitioner's husband on October 8, 1948 (Ex. 13, 148-150), nor had petitioner ever been granted an admission hearing before a board of special inquiry or any

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* All references are to folios unless otherwise indicated.

fact finding agency (25). Petitioner furthermore, although entitled to immediate naturalization pursuant to Section 312 of the Nationality Act of 1940 (8 U. S. C. 712), was denied access to the naturalization court.

The petitioner was thus denied any kind of administrative or legal procedure in which facts could have been ascertained, in which charges could have been made, and in which she could have offered evidence to contradict such charges. Therefore, her husband sought by writ of habeas corpus court review of petitioner's exclusion, on the ground that it was arbitrary and void of any element of due process. The writ of habeas corpus was allowed on October 9, 1948 (4-6). After argument and reargument, it was dismissed by an order dated January 3, 1949 (162-165) of the United States District Court for the Southern District of New York. Judge Hulbert wrote two opinions, the first one dated December 4, 1948 (82-105), the second one dated December 27, 1948 (160-161).

The Court of Appeals, upon petitioner's appeal, affirmed Judge Hulbert's order by decree dated March 11, 1949. None of the opinions below has as yet been reported.

The petitioner since her arrival in the United States has been held at Ellis Island. Her applications for her release *pendente lite* having been denied by both courts below.

Jurisdiction

The order of the Court of Appeals for the Second Circuit was made and entered on the 11th day of March, 1949. The jurisdiction of this court is invoked under Section 1254(1) of Title 28, U. S. C. and Section 5(b) of Rule 38 of the Revised Rules of this Court, as amended.

Statement of the Matter Involved

The main problem of the present case is whether a war bride, seeking admission to the United States under the favorable conditions set forth by the War Bride Act, (Public Law 271 of 1945, 8 U. S. C. A. 232, *infra*, p. 34) may be excluded from the United States without any kind of fact finding procedure, particularly without a hearing before a Board of Special Inquiry. Both courts below have decided that the Attorney General has the dictatorial powers, assumed by him in this case, to deprive an honorably discharged veteran of his wife, and that the Attorney General may do so without observing any element of due process. Against such adjudication the petitioner, and her husband who personally commenced this proceeding by signing the petition for a writ of habeas corpus, turn to this High Tribunal for redress of their grievances. A further problem of importance presented by this case is whether a person within the United States may be denied access to the Naturalization Courts by arbitrary action of the Immigration and Naturalization Service.

The petitioner, a woman of thirty-three years of age, of German-Jewish origin (110) applied on August 14, 1948, at the Port of New York for admission to the United

States as a war bride (17). On that day she was taken to Ellis Island where she was temporarily excluded from the United States. On October 6, 1948, the Attorney General ordered the petitioner finally excluded from the United States (18). No reason for such exclusion was stated when this decision was communicated to petitioner's husband on October 8, 1948 (Ex. 13, 148-150), nor was petitioner ever granted the statutory admission hearing before a board of special inquiry of the Immigration and Naturalization Service (25).

Petitioner, who is of Jewish origin, tried early to escape from Nazi prosecution. Soon after Hitler's ascent to power she went to Czechoslovakia, where she became married to a Czech with the name of Boxhornova. This marriage was no success and ended in a divorce. When Nazi Germany swallowed up Czechoslovakia in 1938-1939, petitioner continued her flight for safety and in 1939 found refuge in Great Britain (110).

Being grateful to Britain for her hospitality and desirous of fighting the Nazis, petitioner enlisted in the Royal Air Force where she served from January 1, 1943 to May 30, 1946. She was honorably discharged as a flight sergeant with the highest character rating awarded by the Royal Air Force (Ex. 11, p. 45).

Thereafter the petitioner was at once employed by the Occupation Forces in Germany (30) of the War Department of the United States. There the petitioner served first in the Civil Censorship Division until it was dissolved in the beginning of August, 1947 (111). Exhibit 12 (142-147) shows that after serving in said division for more

than a year (38), Ellen Boxhornova (143, right column) was awarded the European-African-Middle Eastern Theater Ribbon for faithful and satisfactory service. Exhibit 1 (37-39) is a letter of the Adjutant of the Civil Censorship Division of August 6, 1947, certifying petitioner's satisfactory conduct and efficiency rating of "Very Good". Exhibit 6 (61-63), Exhibit 5 (58-59), Exhibit 7, p. 23), Exhibit 10 (76-81) are further testimonials showing that the petitioner, up to the time she departed for the United States, rendered services to our Military Government in Frankfurt-on-the-Main that were recognized by her superiors as "excellent". Said testimonials describe petitioner as "discreet, capable and interested in her work". The decision below concludes from the record (61): "Her official record in so far as appears is excellent."

The petitioner on February 28, 1948, married Mr. Kurt W. Knauff. Mr. Knauff is a citizen of the United States and an honorably discharged veteran of our armed forces (9). Mr. Knauff's discharge papers (p. 5) show the battles and campaigns in Europe in which he participated and the medals he received. He is now serving our Military Government in Frankfurt-on-the-Main as a civilian employee (113).

Mr. Knauff married the petitioner with the consent of the Commanding General of the Frankfurt military post of the U. S. Army. Before this consent was given a thorough check was made by all service commands and intelligence agencies (31).

Being the wife of an honorably discharged veteran, the petitioner qualifies for the special benefits of the War Bride

Act (p. 34 *infra*). In the teeth of this statute she was excluded from the United States without any legal or administrative process. Being the wife of an employee of our government stationed abroad, the petitioner qualifies for immediate naturalization under Section 312 of the Nationality Act (p. 25 *infra*). Although her preliminary petition was duly filed with the District Director of Immigration and Naturalization, she was denied admission to the naturalization court by refusal to process her petition as provided by law.

Questions Presented

Respondent points to the provisions of Sections 175.53 to 175.57 of Title 8, Code of Federal Regulations in justification of petitioner's exclusion from the United States, without any legal process. The following questions are therefore presented in this case:

(1) Are the provisions of Sections 175.53 to 175.57 of Title 8, C. F. R., valid and in harmony with the Constitution and statutes of the United States? Are in particular said regulations in harmony with the Fifth Amendment to the Constitution, with the Passport Act of 1918 (22 U. S. C. 223), and the Proclamation of the President No. 2523? It is contended that with respect to said Passport Act, Presidential Proclamation and Regulations the provisions of the War Bride Act (8 U. S. C. 232-236) take precedent, which War Bride Act makes the admission of qualified war brides mandatory.

(2) Is the petitioner, being within the United States and being the wife of an employee of the Government of the

United States who is stationed abroad, entitled to access to a Naturalization Court pursuant to Section 312 of the Nationality Act of 1940 (8 U. S. C. 712)? May she under said Act offer proof of her good moral character and attachment to the principles of our Constitution, or may the respondent prevent such naturalization proceeding by arbitrarily refusing to process the petition for naturalization. The petitioner contends that respondent has no right so to exclude her from the naturalization courts.

The courts below have answered all these questions contrary to the contentions of the petitioner.

Reasons Why Certiorari Should be Granted

It is respectfully suggested that an honorably discharged veteran and his wife rate the interference of this High Tribunal, if the wife is excluded from admission to the United States by unmotivated executive fiat. While it has sometimes been stated that an immigrant approaching our shores cannot challenge the constitutionality of a statute or of a regulation issued thereunder, the original petitioner of this proceeding was the husband of the detained war bride. The War Bride Act was designed to give the honorably discharged veteran the privilege of bringing to this country his wife, if she shall be admissible under the general immigration laws. This admissibility of the wife is a privilege accorded the veteran by a grateful Congress, and it is respectfully contended that the veteran cannot be deprived of this privilege without due process of law!

The holdings of the courts below, contrary to the rule here enunciated, present constructions of the War Bride

Act and of the relation of said Act to the Fifth Amendment to the Constitution that ought to be settled. The holdings below further sanction a tyrannical exercise of administrative powers that is so shocking to the conscience of our freedom loving nation that this court should exercise its powers of supervision and once again intercede in protection of the individual against oppression.

The powers of the Attorney General under Section 175.57 also need authoritative interpretation, for a Florida District Court has construed said section in manner conflicting with the decisions below in the present case. While the decision of the Florida court is not a conflicting decision of another Court of Appeals, it shows the unsettled condition of some phase of our federal law that calls for the intercession of this Court.

WHEREFORE, it is respectfully prayed that a writ of certiorari issue to the U. S. Court of Appeals for the Second Circuit.

New York City, April 18, 1949.

Respectfully submitted,

GUNTHER JACOBSON,
Counsel for Petitioner.

Supreme Court of the United States

October Term, 1948

No.

UNITED STATES OF AMERICA, ex rel ELLEN KNAUFF,

Petitioner,

against

W. FRANK WATKINS, District Directors of Immigration and Naturalization Service,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

The petitioner has submitted a petition for a writ containing the prescribed statements of facts concerning the proceedings below and the merits of the case, and the conclusions of law why the writ should be granted.

This brief sets forth the legal argument, point by point, quoting and citing authority where necessary and mentioning additional facts appearing on the record where advantageous for continuous reasoning.

The language of those statutes and regulations that are not quoted in the text of the various points is annexed to the brief as Appendix I.

The assignment of errors appears from the captions of the following points:

POINT I

It was error on the part of the courts below to sanction the exclusion of a war bride from the United States by ukase of the Attorney General, without a hearing of any kind, without any fact finding procedure, without confronting her with charges or evidence of any kind, without permitting her the assistance of counsel.

A. The Due Process Clause of the Fifth Amendment to the Constitution protects the privileges under the War Bride Act of an honorably discharged veteran and his spouse.

Ellen Knauff, the petitioner herein, is the alien wife of an honorably discharged war veteran of our army. When she applied for admission to the United States as a war bride in August, 1948, she was whisked to Ellis Island. On October 8, 1948, Mrs. Knauff's husband, Mr. Kurt W. Knauff, was informed by Mr. Zucker, an employee of the Immigration and Naturalization Service, in a letter set forth at length on folios 148 to 150 of the record, as follows:

> Information was sent to this office to the effect that an order has been entered directing that Mrs. Ellen Knauff be denied admission to the United States and that she be returned to the country whence she came."

These are the entire proceedings administered to this war bride, which the courts below have sanctioned as legal, which are here claimed to be arbitrary, tyrannical and unconstitutional.

Mr. Kurt W. Knauff, husband of petitioner, personally came to this country to assist his wife. He instituted the

present proceedings. The writ of habeas corpus herein was issued upon Mr. Knauff's petition. It is emphasized that Mr. Knauff personally is seeking redress in this proceeding although his name does not appear in the title. This court, in disposing of this matter, is requested to consider Mr. Knauff a party to this petition as well as to all proceedings below.

The War Bride Act, Public Law 271 of 1945, provides that:

> "alien spouses * * * of United States citizens * * * having an honorable discharge certificate from the armed forces of the United States during the Second World War shall, if otherwise admissible under the immigration laws * * *, be admitted to the United States."

The language of the statute is clear and unambiguous. "Shall" be admitted means *Must!*

The petitioner, therefore, under Public Law 271, had to be admitted, unless inadmissible under the Immigration Laws.

The grounds for the exclusion of aliens are set forth in Section 3 of the Immigration Act of February 5, 1917, as amended,—8 U. S. C. 136, 137—and comprise anarchists, opposers of organized government, advocates of violence, publishers of subversive doctrines and similar elements. To these have been added by act of Congress of May 25, 1948, "aliens who the Attorney General knows or has reason to believe seek to enter the United States for the purpose of engaging in activities which will endanger the public safety of the United States" (Public Law 552, *infra*,

p. 36). This new law was obviously designed to exclude Fascists, Nazis, and Communists, and similar political agents, who come here for the purpose of spreading obnoxious doctrines. No such charges were made against the petitioner, and she therefore does not fall under any of the statutory exclusion grounds.

In order to justify petitioner's exclusion, the respondent stated that she was excluded by order of the Attorney General pursuant to Section 175.57 of Title 8 of the Code of Federal Regulations (*infra*, p. 51). Said section holds that an alien may be excluded from the United States by the Attorney General and the Secretary of State, and that no hearing by a board of special inquiry shall be held until after the case has been reported to the Attorney General and such hearing is directed by the Attorney General. Said section further holds that the Attorney General may deny the alien hearings if he determines that the alien is excludable under one of the categories set forth in Section 175.53 "on the basis of information of a confidential nature, the disclosure of which would be prejudicial to the public interest." The decision below, page 64, holds that petitioner was excluded and ordered deported to Germany as a result of the procedure provided in Section 175.57 and in exercise of the authority there given the Attorney General.

With this holding issue is taken here on the ground that Section 175.57, in giving the Attorney General power to exclude aliens without a hearing or any kind of process, is unconstitutional.

Amendment V of the Constitution provides:

> "No person shall * * * be deprived of life, liberty, or property, without due process of law."

These principles apply to immigration proceedings. The Supreme Court in *Yamataya* v. *Fisher*, 1903, 189 U. S. 86, 23 S. Ct. 611, 614 held with respect to immigration proceedings:

> "But this court has never held, nor must we now be understood as holding, that administrative officers, when executing the provisions of a statute involving the liberty of persons, may disregard the fundamental principles that inhere in 'due process of law' as understood at the time of the adoption of the Constitution. One of these principles is that no person shall be deprived of his liberty without opportunity, at some time, to be heard, before such officers, in respect of the matters upon which his liberty depends, * * * Therefore, it is not competent for * * * any executive officer * * * arbitrarily to cause an alien * * * to be taken into custody and deported without giving him all opportunity to be heard upon the questions invading his right to be and remain in the United States. No arbitrary power can exist where the principles involved in due process of law are recognized."

Inasmuch as relator's right to enter and her husband's right to have her admitted (127, 128) under the War Bride Act were determined in this case without the statutory hearing, without any hearing at all, after denial of counsel and access to the courts, without any notice to the alien of the charges that were made against her and without the offer of any evidence against her (17, 18, 25), the proceedings of the Attorney General are void and of no effect.

Occasionally court decisions have held that aliens not yet admitted to the United States have no standing in our courts to challenge the constitutionality of Acts of Congress. To this we reply that we attack no act of Congress but a departmental regulation, furthermore that one of the petitioners in this proceeding is Mr. Kurt W. Knauff, husband of the alien, a citizen of the United States. Together with his wife, the petitioner, Mr. Knauff is a party here in pressing the challenge of the constitutionality of 8 C. F. 175.57. As a citizen and a veteran he appears entitled to raise the constitutional question.

The War Bride Act of Dec. 28, 1945, was a part of that legislation that Congress enacted to show the returning soldiers the appreciation of a grateful nation. In the interpretation of the Act it should be considered that petitioner's exclusion is a blow not only to herself but to her husband whose discharge certificate (p. 5 of record) is "a testimonial of Honest and Faithful Service to this country." Mr. Knauff has participated to the full in this proceeding. He was the one who signed the petition for Habeas Corpus (7 to 12). Mr. Knauff, by the act of the Attorney General, is being deprived of his wife. He is being deprived of his wife without due process of law, without any process of law, by administrative fiat. Mr. Knauff has a right to insist that his wife's admissibility be determined in a proceeding bearing the characteristics of due process.

Mr. Knauff now turns to this High Tribunal and clamors for its writ of certiorari so that it may be determined whether the Attorney General may place an honorably discharged veteran of World War II before the awful choice between his country and his wife; whether the Attorney

General may do so without any process of law, on the basis of secret information, that petitioner has alleged to be spurious, mendacious and based upon a foul denunciation (11, 32).

Mr. and Mrs. Knauff, both as the record shows honorably discharged veterans of the last war, both faced with the brutal and unjustified annihilation of their lives, respectfully pray every justice of this court to yield to their importunities and issue a writ of certiorari because of the magnitude of the injustice done to them, for the sake of their services to the Allied Cause in the last war, for the sake of the passion for justice of this law loving nation.

B. Even if the war bride seeking admission should not be entitled to constitutional due process, she is entitled to statutory due process.

The proceedings concerning the exclusion of aliens to the United States are statutory. The basic provisions are contained in 8 U. S. C. 152, reading:

> "Every alien who may not appear to the examining immigrant inspector at the port of arrival to be clearly and beyond a doubt entitled to land shall be detained for examination in relation thereto by a board of special inquiry. In the event of rejection by a board of special inquiry, in all cases where an appeal to the Attorney General is permitted by this chapter, the alien shall be so informed and shall have the right to be represented by counsel or other adviser on such appeal."

Reference is further made to 8 U. S. C. 153, from which the following language is quoted:

> "Such boards shall have authority to determine whether an alien who has been duly held shall be

allowed to land or shall be deported. All hearings before such boards shall be separate and apart from the public, but the immigrant may have one friend or relative present under such regulations as may be prescribed by the Attorney General. Such boards shall keep a complete permanent record of their proceedings and of all such testimony as may be produced before them; and the decisions of any two members of the board shall prevail, but either the alien or any dissenting member of the said board may appeal through the district director of immigration and naturalization at the port of arrival and the Commissioner of Immigration and Naturalization to the Attorney General, and the taking of such appeal shall operate to stay any action in regard to the final disposal of any alien whose case is so appealed until the receipt by the district director of immigration and naturalization at the port of arrival of such decision which shall be rendered solely upon the evidence adduced before the board of special inquiry. In every case where an alien is excluded from admission in the United States, under any law or treaty now existing or hereafter made, the decision of a board of special inquiry adverse to the admission of such alien shall be final, unless reversed on appeal to the Attorney General."

In the present case, the statutory manner of proceeding was entirely disregarded. The relator was not placed before a board of special inquiry; she was refused a lawyer and access to the courts; she was secretly examined by an official and finally advised that she was excluded from the United States (25). No exclusion grounds were officially stated (Ex. 13, 148-150).

The judges below find a justification for the relator's exclusion and for the proceedings administered to her in sections 175.53 to 175.57 of Title 8, C. F. R., which are set forth *infra*, pp. 47 to 52.

These regulations need careful analysis.

Section 175.53 sets forth the classes of aliens whose entry shall be deemed prejudicial to the United States. Subsection (a) terms prejudicial the entry of aliens who belong to one of the classes specified in the act of October 16, 1918, as amended. This act is identical with section 137 of Title 8, U. S. C. It excludes anarchists, members of subversive organizations, and other similar categories which were discussed on pages 11 and 12 of this brief. It appears, from the record that the classes specified in section 175.53 (a), Title 8, C. F. R., do not apply to this petitioner.

Similarly, subsections (b), (c), (d), (e), (f), and (g), of section 175.53 do quite obviously not apply. Neither does subsection (h) apply. It refers to 22 U. S. C. Sup. 228 and 229, which sections authorize the consular officers to refuse visas to aliens who seek to enter the United States for the purpose of engaging in activities which will endanger the public safety of the United States. As this section is addressed to consular officers, it gives no powers of exclusion to the Attorney General and it was for the purpose of closing this gap that Congress enacted Public Law 552 of 1948 (*infra*, p. 36). The legislative history of Public Law 552, printed in full below (pp. 37-39), shows that Congress had in mind filling this gap. The letter of Mr. McGregor, Assistant to the Attorney General, to Representative Michener, of June 20, 1947, *infra*, pp. 38-39, therefore expressly states:

> "However, if an alien succeeds in concealing such purpose from the diplomatic or consular officer, and obtains a visa or other travel document, he cannot legally be denied admission on the ground of his purpose after he reaches the United States."

It is therefore proved that the relator cannot have been excluded by the Attorney General under subsection (h) of section 175.53 which refers to a power not vested in the Attorney General. If this relator on the other hand was sought to be excluded under Public Law 552, she had a right to a trial before a Board of Special Inquiry, which trial was denied her.

Subsection (i) refers to alien enemies. We need not go into this section further, for it has not been invoked against the relator. It might also be mentioned that, the alien enemy act of 1798 is not an "Immigration Law". An alien spouse of German nativity must quite obviously be admitted under the War Bride Act which expressly holds that war brides may solely be excluded on the exclusion grounds of the "Immigration Laws".

Subsection (j) is not applicable.

Subsection (k) is a catch-all clause which is invoked by the government in this case. It reads:

> "(k) Any alien who is not within one or more of the classes defined in paragraphs (a) to (j), inclusive, but in whose case circumstances of a similar character may be found to exist, which render the alien's admission prejudicial to the interests of the United States, which it was the purpose of the act of June 21, 1941 (55 Stat. 252; 22 U. S. C., Sup. 223) to safeguard."

It is submitted that this clause is so vague, ambiguous, and void of precise meaning, that it cannot be considered valid. If valid it would authorize the Government to do what it pleases and set aside the statutory admission proceeding at pleasure.

That vague, ambiguous and indefinite statutes are void has always been held by our courts. Reference is made to decisions like *A. B. Small Co.* v. *Amer. Sugar Refining Co.*, 1925, 267 U. S. 233, 45 S. Ct. 295, where an act prohibiting the exaction of unreasonable prices for necessaries was held void because indefinite, whether taken as a civil regulation or as a criminal statute. It is entirely impossible to define who an alien is who is not in the classes (a) to (j) "but in whose case circumstances of a similar character may be found to exist." The requirements of definiteness established by the courts with reference to statutes must, *a fortiori*, be applied with increased strictness to the Rules and regulations of administrative agencies.

In the present case we noticed that Congress in 8 U. S. C. 137 has defined with definiteness the classes of aliens excludable for political reasons. Section 175.53 (k) now adds a new class of excludable persons. Acting new classes of excludable persons is in itself beyond administrative powers.

This new class of excludable aliens is in addition improperly, i.e. too vaguely, defined, and so comprehensive that it makes 8 U. S. C. 137 illusory.

Summing up the previous argument, the conclusion is reached that the relator falls under none of the classes of aliens whose entry pursuant to Section 175.53 shall be

deemed prejudicial to the United States on the grounds that sections (a) to (j) do not apply and that section (k) is without meaning and beyond statutory power.

Sections 175.54 to 175.56 are not applicable.

Section 175.57 (a) is invoked by the court below as the basis for the proceeding applied to the exclusion of this alien. This section (*infra*, p. 51) purports to authorize the temporary exclusion of any alien if "it appears that he is or may be excludable under any of the categories set forth in section 175.53". Such alien, the section further provides, "shall be excluded and deported unless the Secretary of State is satisfied that the admission of the alien would not be prejudicial to the interests of the United States."

In the present case, the Secretary of State was not consulted. The government return expressly states (18):

> "2. On October 6, 1948, the Assistant Commissioner of Immigration and Naturalization recommended that the relator's temporary exclusion be made permanent without the right of a hearing before a Board of Special Inquiry under the provisions of 8 C. F. R. 175.57. On the same day, this recommendation was adopted by the Attorney General, who ordered relator excluded from the United States."

It appears that the Attorney General acted on his own, acted beyond the powers that his own rules purported to give him. On this reasoning alone the exclusion order herein must fall.

That under Rule 175.57 (a) —if indeed it shall not be invalid for indefiniteness—the Secretary of State and not the Attorney General must exclude the alien, has been held in a recent decision of Judge Holland of the U. S. District Court for Florida, in a matter of Visic (Nov. 1948). This decision is annexed hereto, pp. 53-56, below, as part of Appendix II.

Section 175.57 (b) purports to give the Attorney General power to deny the alien a hearing by a board of special inquiry and an appeal therefrom "if the Attorney General determines that he is excludable under one of the categories set forth in section 153.53 on the basis of information of a confidential nature, the disclosure of which would be prejudicial to the public interest."

This section has been violated in several ways. First, as shown before, relator is not being excluded under, and does not belong to any, of the classes set forth in section 175.53. Secondly, there is no determination by the Attorney General that the relator is excludable on confidential information, the disclosure of which would be contrary to the public interest. Inasmuch as the Attorney General wrote about this matter to his friend "Joe" (70-75), it would seem that he did not deem the matter confidential. Thirdly, there is no statutory basis for section 175.57, which is the arbitrary and unauthorized product of government officials desirous of legislating.

The conclusion is that there is no basis for the proceeding adopted herein by the government, that the by-passing of the boards of special inquiry was unauthorized, and that the writ herein should have been sustained because the procedure prescribed by law to determine the alien's admissibility was not followed.

C. 8 C. F. R. 175.53 to 175.57 do not apply to war brides and are unauthorized by statute.

The courts below held that sections 175.53 to 175.57, Title 8, C. F. R. are authorized by 22 U. S. C. 223 and Presidential Proclamation 2523. It is submitted that the learned judges are in error. 22 U. S. C. 223, set forth verbatim *infra* p. 33, is the so-called Passport Act of 1918, as amended. It applies, as its language shows, to times of war. Relator argues that, as far as she is concerned, the war is at an end. Reference is made to that part of the War Bride Act which says that

> "For the purpose of this Act, the Second World War shall be deemed * * * to have ceased upon the termination of hostilities as declared by the President * * *".

The President declared the termination of hostilities by proclamation 2714 on December 31, 1946 (*infra*, p. 46). From this fact it is deduced that with respect to war brides no war powers can be invoked by the government. No war bride, since Dec. 31, 1946, can be excluded under powers flowing from the Passport Act of 1918.

Furthermore, 22 U. S. C. 223 (a) authorize the President to prescribe "reasonable rules and regulations." It does not authorize the government to invent additional exclusion grounds. Inasmuch as 8 C F. R. 175.53 (k) and 8 C. F. R. 175.57 establish new grounds for exclusion, they are void. The Attorney General, as he purported to do, had no power to make excludable such aliens "in whose case circumstances of a similar character may be found" (175.53 (k)) and his attempt to act in this case under this provision is contrary to statute, not authorized by 22 U. S. C. 223.

Section 175.57 therefore is no "reasonable" rule or regulation. It does not carry the statute into effect; it is an attempt to legislate.

The Attorney General was not authorized by 22 U. S. C. 223 (a) to abolish the statutory boards of special inquiry. He was given no power to supersede the Immigration Laws.

The President under 22 U. S. C. 223 (a) issued Proclamation 2523 (*infra*, p. 40). Said proclamation under (3), second paragraph states (*infra*, p. 43):

> "No alien shall be permitted to enter the United States if it appears to the satisfaction of the Secretary of State that such entry would be prejudicial to the interests of the United States as provided in the rules and regulations hereinbefore authorized to be prescribed by the Secretary of State, with the concurrence of the Attorney General."

It is apparent that the President gave the power to exclude under said proclamation to the Secretary of State and not to the Attorney General and that the Attorney General's acts in this matter are not authorized by said Proclamation. If the government desires to argue that 8 C.F.R. 175.53—175.57 were promulgated by the Secretary of State and the Attorney General jointly, the answer is that the Secretary of State has no power to delegate his powers to the head of another government agency, and that in fact section 175.57 (a) did not delegate the power to exclude to the Attorney General, but retained it with the Secretary of State. Judge Holland in the Visic decision came to the same conclusion (*infra*, pp. 53-56).

t has been pointed out above that section 5 of the War Bride Act, *infra*, p. 35, provides that for the purposes of this act the second world war has been terminated with the presidential proclamation of cessation of hostilities, on Dec. 31, 1946. From this it is deduced that 22 U. S. C. 223 cannot be applicable to a war bride, for section 223 expressly holds that the powers therein defined are granted solely

(1) When the United States is at war;

(2) During the existence of the emergency proclaimed by the President on May 27, 1941;

(3) Whenever there exists a state of war between two or more states.

The War Bride Act shows that as to war brides and their right to enter we are to be deemed at peace. The emergency proclaimed by the President on May 27, 1941, was terminated and replaced by the outbreak of the second world war. There is no war between two or more states in existence. For this reason again 22 U. S. C. 223 cannot be applicable to this case.

The courts below rejected this argument on the ground that this Court held in *Ludecke* v. *Watkins*, 1948, 335 U. S. 160, that we are still at war with Germany. It is submitted that the *Ludecke* case is not applicable to the present situation, as Ludecke was not a war bride and the construction of the War Bride Act was not attempted in that case.

Petitioner Ellen Knauff should therefore have been given the statutory admission hearing under section 8, U. S. C. 152 and 153.

POINT II

It was error on the part of the courts below to sanction the petitioner's exclusion from the Naturalization Court.

One of the independent grounds on which the writ of habeas corpus in this case was sought to be sustained was that relator filed her preliminary form for petition for naturalization on November 23, 1948 (125, and Ex. 14, p. 51), but that respondent failed and refused to process the same and denied her admission to the naturalization court (126).

The courts below disposed of this issue by deciding that there is no right to citizenship until the petitioner is lawfully in the country (160). The courts below therefore denied petitioner's demand to direct the respondent to call the relator for an immediate hearing in which she may formally file the petition (127).

It is submitted that the learned judges are in error.

The legal basis of petitioner's demand is section 312 of the Nationality Act of 1940 (8 U. S. C. 712) reading:

> "An alien, whose spouse is (1) a citizen of the United States, (2) in the employment of the Government of the United States, or of an American institution of research recognized as such by the Attorney General, or an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof, and (3) regularly stationed abroad in such employment, and who is (1) in the United States at the time of naturalization, and

(2) declares before the naturalization court in good faith an intention to take up residence within the United States immediately upon the termination of such employment abroad of the citizen spouse, may be naturalized upon compliance with all requirements of the naturalization laws, with the following exceptions:

(a) No declaration of intention shall be required; and

(b) No prior residence within the United States or within the jurisdiction of the naturalization court or proof thereof shall be required. Oct. 14, 1940, c. 876, Title I, Subchap. III, Sect. 312, 54 Stat. 1145."

It is apparent on the face of this section 312 that relator qualifies for immediate naturalization. Her husband is in the employ of the U. S. government abroad. Judge Hulbert so found as a fact (88, 89). Relator is in the United States, she desires to declare her intention to take up residence. All requirements of the statute are met; there is no reason discernible why relator should be refused her day in court on her naturalization petition.

The naturalization procedure is set forth in the Nationality Act of 1940.

Sec. 301 (8 U. S. C. 701) provides:

"(a) Exclusive jurisdiction to naturalize persons as citizens of the United States is hereby conferred upon the following specified courts: District Courts of the United States * * * The jurisdiction of all the courts herein specified to naturalize persons shall extend only to such persons resident within the respective jurisdictions, except as otherwise specifically provided in this Act.

* * *

(d) A person may be naturalized as a citizen of the United States in the manner and under the conditions prescribed in this Act, and not otherwise."

It should be pointed out at this time that the second sentence of section 301 (a) is not in the way of relator's petition, for section 312 (*supra*, p. 25) expressly provides that "(b) no prior residence within the United States or within the jurisdiction of the naturalization court or proof thereof shall be required." That relator does not reside within the jurisdiction of the District Court for the Southern District of New York is therefore no reason not to process the petition or to deny it.

Sec. 307 (a) Nat. Act (8 U. S. C. 707a) provides:

"(a) No person, except as hereinafter provided in this Act, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing petition for naturalization has resided continuously within the United States for at least five years and within the State in which the petitioner resided at the time of filing the petition for at least six months, (2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and (3) during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States. (54 Stat. 1142; 8 U. S. C. 707.)"

These requirements again are dispensed with for alien spouses of citizens employed by our government and stationed abroad, as section 312 shows.

The Procedure to be followed in naturalization matters is set forth in sections 327 ss of the Nationality Act.

The preliminary examination of the applicant is in the hands of the Commissioner of Immigration. Section 327 (b) of the Nationality Act (8 U. S. C. 727 (b)) provides:

> "(b) The Commissioner, with the approval of the Attorney General, shall make such rules and regulations as may be necessary to carry into effect the provisions of this chapter and is authorized to prescribe the scope and nature of the examination of petitioners for naturalization as to their admissibility to citizenship for the purpose of making appropriate recommendations to the naturalization courts. Such examination shall be limited to inquiry concerning the applicant's residence, good moral character, understanding of and attachment to the fundamental principles of the Constitution of the United States, and other qualifications to become a naturalized citizen as required by law, and shall be uniform throughout the United States. (54 Stat. 1151; 8 U. S. C. 727.)"

With respect to this provision it should be mentioned that such rules were made by the Commissioner. They are contained in sections 363.1 to 363.4, Title 8, C. F. R. Sections 363.3 and 363.4 of said rules provide:

> "363.3. Certificate of arrival to be filed with petition for naturalization. Each petitioner for naturalization who entered the United States after June 29, 1906, shall, unless specifically exempted by the Nationality Act of 1940 from the requirement of a certificate of arrival, file with his petition for naturalization a certificate of arrival issued in accordance with § 363.1. Such certificate of arrival shall be filed

with the petition for naturalization at the time the petition is filed. The certificate of arrival issued to support a declaration of intention in accordance with §363.2, may be used in support of the petition for naturalization. (Nationality Act of 1940, sec. 332 (c), 54 Stat. 1156)"

"363.4. Petitioners who are exempt from requirement of certificate of arrival. The following persons may file petitions for naturalization without the issuance of a certificate of arrival: (a) persons who entered the United States for permanent residence on or prior to June 29, 1906; and (b) petitioners under sections 317 (a) (b) (c), 318, 322, 323, 324, and 325 of the Nationality Act of 1940. (Nationality Act of 1940, secs. 317 (a) (b) (c), 318, 322, 323, 324, 325 and 332 (c), 54 Stat. 1146, 1147, 1148-1150, 1156)"

It is quite obviously on the basis of these rules, why respondent refused to process the present petition, for relator is not exempted by said rules from the procurement of a certificate of arrival, section 312 of the Nationality Act not being mentioned in section 363.4 of 8 C. F. R.

It is submitted that while this regulation explains why respondent refuses to process petitioner's application for citizenship, this refusal is not made legal thereby. The regulation is not in harmony with the statute and therefore is without legal authority under section 727 (b) which expressly provides that such regulations shall be made "as may be necessary to carry into effect the provisions of this chapter." The regulation, in leaving out section 312 in 8 C. F. R. 363.4, does not carry the statute into effect.

For the reason set forth the petitioner is entitled to her day in court and the respondent should be directed to process the petition so that the case may be calendared

and petitioner bring proof of her good moral character, loyalty and attachment to our institutions. Where the Immigration Service arbitrarily refuses to bring a petition for naturalization before the court, the court has power to order it to do so:

> *Czuczka* v. *Rifkind*, 1947, 160 F. (2d) 308;
> See also Sections 333 and 334 Nationality Act (733, 734 of 8 U. S. C.).

The question here raised, whether lawful entry is a prerequisite of applying for citizenship pursuant to section 312 Nationality Act, has never been decided by the courts. It ought to be mentioned however that an opinion exists which bears the name of the present Justice of the Supreme Court, the Honorable Robert H. Jackson, who rendered said opinion when he was Attorney General. This opinion is reprinted *infra*, pp. 57-59. The court will notice that it comes to a conclusion opposite to the one here reached and is in harmony with the decisions below.

Despite the great respect which the opinion of so eminent a jurist as Mr. Justice Jackson commands, it should be pointed out that he did not have the benefit of argument of counsel when writing his opinion and that he was in the position, as Attorney General, that the Department of Justice had already taken a stand on that point in controversy by promulgating C. F. R. 363.4 which was discussed above. The Department of Justice, of course, had a tendency to justify the position previously taken. A final determination of the problem can only be made by this court.

The main point in the Attorney General's reasoning is that section 332 sets forth in general as a requirement for naturalization "proof of legal entry in the United States for permanent residence." It seems necessary to take issue

with this premise. Section 332 of the Nationality Act sets forth a sample of a petition for naturalization, together with the direction that the "petition shall contain *substantially* the following averments by such applicant". The point is here made that the list of items the petition must contain is that of a normal naturalization case. Item 14, *e. g.*, contains the statement that the applicant declared his intention to become a citizen of the United States on a cerain date. Since section 312 Nationality Act exempts the relator herein from the requirement of "first papers", they are not necessary in her case, and similarly, item 11, referring to "lawful entry for permanent residence" is not applicable, because section 312 merely demands a declaration of the applicant that she intends "to take up residence within the United States immediately upon the termination of such employment abroad of the citizen spouse." Section 312 expressly holds therefore that the applicant thereunder is *not* expected to take up permanent residence. Item 11 of section 332 is thereby expressly dropped for applicant under section 312.

Mr. Attorney General Jackson further argues that "the other exemption in section 312 being expressly granted," it is his opinion that an exemption from lawful entry should not be read into the act by implication.

The answer to this is that section 312, not by implication, but by most pertinent direct language exempts the alien spouse from the requirement of legal entry by requiring only that she "is (1) in the United States at the time of the naturalization." There is no doubt that relator "is in the United States". Said section further holds "no prior residence within the United States * * * or proof thereof shall be required." If now a certificate of legal

entry for permanent residence is required, proof is required of previous residence, which the statute expressly rules out. If no prior residence is required at the time of the application, it can only mean that applicant need not be a resident at the time of the application and that all that is necessary is that, somehow, she is actually in the United States. Relator meets this requirement.

Another point must be made in this connection. This court, in deciding this case, will not have to determine whether or not the relator is entitled to naturalization with or without proof of legal entry. This is an issue to be determined by the naturalization court. Even if respondent feels that relator is not entitled to naturalization without such certificate, respondent has no right to decide this question of law. Respondent still has to process the case and to put it down for filing of the petition. Respondent may then submit his objections to the naturalization court for determination. It is an unlawful arrogation of power on the part of respondent, to withhold this application from the court, and respondent should be directed to proceed in the matter and to afford relator an opportunity to file and complete her petition for naturalization and the writ of habeas corpus herein should have been sustained for such purpose.

CONCLUSION

A writ of certiorari to the United States Court of Appeals for the Second Circuit should issue.

April 19, 1949.

Respectfully submitted,

GUNTHER JACOBSON,
Attorney for Relator.

APPENDIX I

Statutes and Regulations

(Shorter citations of other statutes are set forth verbatim at the proper place in the points below.)

Passport Act of 1918 as amended in 1941, Title 22, U. S. C., section 223:

> "§ 223. *War-time restrictions generally.* When the United States is at war or during the existence of the national emergency proclaimed by the President on May 27, 1941, or as to aliens whenever there exists a state of war between, or among, two or more states, and the President shall find that the interests of the United States require that restrictions and prohibitions in addition to those provided otherwise than by sections 223-226 of this title be imposed upon the departure of persons from and their entry into the United States, and shall make public proclamation thereof, it shall, until otherwise ordered by the President or Congress, be unlawful (as amended June 21, 1941, c. 210, § 1, 55 Stat. 252).
>
> "(a) For any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President shall prescribe;"
>
> • • •

Aliens-Spouses and Minor Children of Citizens in Armed Forces

CHAPTER 591—PUBLIC LAW 271

[H. R. 4857]

An Act to expedite the admission to the United States of alien spouses and alien minor children of citizen members of the United States armed forces.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

Notwithstanding any of the several clauses of section 3 of the Act of February 5, 1917, excluding physically and mentally defective aliens, and notwithstanding the documentary requirements of any of the immigration laws or regulations, Executive orders, or Presidential proclamations issued thereunder, alien spouses or alien children of United States citizens serving in, or having an honorable discharge certificate from the armed forces of the United States during the Second World War shall, if otherwise admissible under the immigration laws and if application for admission is made within three years of the effective date of this act, be admitted to the United States: Provided, That every alien of the foregoing description shall be medically examined at the time of arrival in accordance with the provisions of section 16 of the Act of February 5, 1917, and if suffering from any disability which would be the basis for a ground of exclusion except for the provision of this

Act, the Immigration and Naturalization Service shall forthwith notify the appropriate public medical officer of the local community to which the alien is destined: PROVIDED FURTHER, That the provisions of this Act shall not affect the duties of the United States Public Health Service so far as they relate to quarantinable diseases.

Sec. 2. Regardless of section 9 of the Immigration Act of 1924, any alien admitted under section 1 of this Act shall be deemed to be a nonquota immigrant as defined in section 4 (a) of the Immigration Act of 1924.

Sec. 3. Any alien admitted under section 1 of this Act who at any time returns to the United States after a temporary absence abroad shall not be excluded because of disability or disabilities that existed at the time of his admission.

Sec. 4. No fine or penalty shall be imposed under the Act of February 5, 1917, except those arising under section 14, because of the transportation to the United States of any alien admitted under this Act.

Sec. 5. For the purpose of this Act, the Second World War shall be deemed to have commenced on December 7, 1941, and to have ceased upon the termination of hostilities as declared by the President or by a joint resolution of Congress.

Approved December 28, 1945.

CHAPTER 338—PUBLIC LAW 552 OF 1948
[1878]

An Act to amend the immigration laws to deny admission to the United States of aliens who may be coming here for the purpose of engaging in activities which will endanger the public safety of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

Section 1 (a) of the Act of October 16, 1918, as amended (40 Stat. 1012; 41 Stat. 1008-9; 54 Stat. 673; 8 U. S. C., 137), is further amended by inserting the following clause immediately after the clause "Aliens who are anarchists;": "or aliens who the Attorney General knows or has reason to believe seek to enter the United States for the purpose of engaging in activities which will endanger the public safety of the United States".

Approved May 25, 1948.

LEGISLATIVE HISTORY OF PUBLIC LAW 552 OF 1948

Senate Report No. 1199, Apr. 30, 1948

[To accompany H.R. 1878]

House Report No. 1286, Jan. 29, 1948

[To accompany H.R. 1878]

The Senate Report repeats in substance the House Report

Senate Report No. 1199

The Committee on the Judiciary, to whom was referred the Bill (H.R. 1878) to amend the immigration laws to deny admission to the United States of persons who may be coming here for the purpose of engaging in activities which will endanger the public safety of the United States, do now report the bill favorably to the Senate with amendments, and recommend that the bill as amended do pass.

Purpose of the Bill

The purpose of the bill is to give the Attorney General the same power to exclude aliens who might be coming to the United States for the purpose of engaging in activities which would endanger the public safety as is presently vested in the Secretary of State to refuse visas to the same class of persons coming to the United States.

The purpose of the amendments is to make it clear that the power to be exercised under the bill is related to aliens only and not to persons other than aliens. It is highly improbable that the power vested under the terms of the bill

could under the Constitution of the United States be used to exclude citizens.

STATEMENT OF FACTS

The pertinent facts which prompt the passage of the bill are set forth in a letter dated June 20, 1947, from the then assistant to the Attorney General, to the chairman of the Committee on the Judiciary of the House of Representatives, which letter reads as follows:

JUNE 20, 1947.

HON. EARL C. MICHENER,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D. C.

MY DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice relative to a bill (H.R. 1878) which would amend the immigration laws to exclude from admission to the United States persons who the Attorney General knows or has reason to believe seek to enter the country for the purpose of engaging in activities which would endanger the public safety.

Under existing law (22 U. S. C. 228), whenever an American diplomatic or consular officer knows or has reason to believe that an alien seeks to enter the United States for the purpose of engaging in activities which will endanger the public safety, he must refuse to issue to such alien an immigration visa or any other document entitling the alien to present himself for admission into the country. However, if the alien succeeds in concealing such purpose from the diplomatic or consular officer and obtains a visa or other travel document, he cannot legally be denied admission on the ground of his purpose after he reaches the United States.

The bill under consideration would correct this apparent deficiency in the immigration laws, and, subject to the following suggestion, the Department recommends its enactment.

The bill provides for the insertion of its amending clause before specific language contained in section 3 of the act of February 5, 1917 (39 Stat. 875), which language does not appear to have been retained verbatim in the acts of October 16, 1918 (40 Stat. 1012), June 5, 1920 (41 Stat. 1008), or subsequent acts, which have been codified under 8 U. S. C. 137, relating to the exclusion of anarchists and similar classes of undesirable aliens.

For purpose of clarity in construction, therefore, it is suggested that the bill be amended after its enacting clause to read as follows:

> "That section 1 of the act of June 5, 1920 (41 Stat. 1008), as amended, is further amended by inserting the following clause immediately after the clause 'Aliens who are anarchists': 'or persons who the Attorney General knows or has reason to believe seek to enter the United States for the purpose of engaging in activities which will endanger the public safety of the United States.' "

The Director of the Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

DOUGLAS W. MCGREGOR,
The Assistant to the Attorney General.

The committee after consideration of all the facts is of the opinion that the bill (H. R. 1878), as amended, should be enacted and it therefore accordingly so recommends its enactment.

Proclamation No. 2523

CONTROL OF PERSONS ENTERING AND LEAVING THE UNITED STATES

By the President of the United States of America

A Proclamation

Whereas the act of Congress approved on May 22, 1918 (40 Stat. 559), as amended by the act of Congress approved on June 21, 1941 (Public Law 114, 77th Cong., chap. 210, 1st sess., 55 Stat. 252)[1] vests authority in me to impose restrictions and prohibitions in addition to those otherwise provided by law upon the departure of persons from and their entry into the United States when the United States is at war, or during the existence of the national emergency proclaimed by the President on May 27, 1941, or, as to aliens, whenever there exists a state of war between or among two or more states, and when I find that the interests of the United States so require; and

Whereas the national emergency proclaimed by me on May 27, 1941 is still existing; and

Whereas there unhappily exists a state of war between or among two or more states and open hostilities engage a large part of the Eastern Hemisphere; and

Whereas the exigencies of the present international situation and of the national defense require that restrictions and prohibitions, in addition to those otherwise provided by law, be imposed upon the departure of persons from and their entry into the United States, including the

Panama Canal Zone, the Commonwealth of the Philippines, and all territory and waters, continental or insular, subject to the jurisdiction of the United States:

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, acting under and by virtue of the authority vested in me as set forth above, do hereby find and publicly proclaim and declare that the interests of the United States require that restrictions and prohibitions, in addition to those otherwise provided by law, shall be imposed upon the departure of persons from and their entry into the United States, including the Panama Canal Zone, the Commonwealth of the Philippines, and all territory and waters, continental or insular, subject to the jurisdiction of the United States; and I make the following rules, regulations, and orders which shall remain in force and effect until otherwise ordered by me:

(1) After the effective date of the rules and regulations hereinafter authorized, no citizen of the United States or person who owes allegiance to the United States shall depart from or enter, or attempt to depart from or enter, the United States, including the Panama Canal Zone, the Commonwealth of the Philippines, and all territory and waters, continental or insular, subject to the jurisdiction of the United States, unless he bears a valid passport issued by the Secretary of State or, under his authority, by a diplomatic or consular officer of the United States, or the United States High Commissioner to the Philippine Islands, or the chief executive of Hawaii, of Puerto Rico, of the Virgin Islands, of American Samoa, or of Guam, or unless he comes within the provisions of such exceptions or fulfils such

conditions as may be prescribed in rules and regulations which the Secretary of State is hereby authorized to prescribe in execution of the rules, regulations, and orders herein prescribed. Seamen are included in the classes of persons to whom this paragraph applies.

(2) No alien shall depart from or attempt to depart from the United States unless he is in possession of a valid permit to depart issued by the Secretary of State or by an officer designated by the Secretary of State for such purpose, or unless he is exempted from obtaining a permit, in accordance with rules and regulations which the Secretary of State, with the concurrence of the Attorney General, is hereby authorized to prescribe in execution of the rules, regulations, and orders herein prescribed; nor shall any alien depart from or attempt to depart from the United State at any place other than a port of departure designated by the Attorney General or by the Commissioner of Immigration and Naturalization or by an appropriate permit-issuing authority designated by the Secretary of State.

No alien shall be permitted to depart from the United States if it appears to the satisfaction of the Secretary of State that such departure would be prejudicial to the interests of the United States as provided in the rules and regulations hereinbefore authorized to be prescribed by the Secretary of State, with the concurrence of the Attorney General.

(3) After the effective date of the rules and regulations hereinafter authorized, no alien shall enter or attempt to

enter the United States unless he is in possession of a valid unexpired permit to enter issued by the Secretary of State, or by an appropriate officer designated by the Secretary of State, or is exempted from obtaining a permit to enter in accordance with the rules and regulations which the Secretary of State, with the concurrence of the Attorney General, is hereby authorized to prescribe in execution of these rules, regulations, and orders.

No alien shall be permitted to enter the United States if it appears to the satisfaction of the Secretary of State that such entry would be prejudicial to the interests of the United States as provided in the rules and regulations hereinbefore authorized to be prescribed by the Secretary of State, with the concurrence of the Attorney General.

(4) No person shall depart from or enter, or attempt to depart from or enter, the United States without submitting for inspection, if required to do so, all documents, articles, or other things which are being removed from or brought into the United States upon or in connection with such person's departure or entry, which are hereby made subject to official inspection under rules and regulations which the Secretary of State in the cases of citizens, and the Secretary of State with the concurrence of the Attorney General in the cases of aliens, is hereby authorized to prescribe.

(5) A permit to enter issued to an alien seaman employed on a vessel arriving at a port in the United States from a foreign port shall be conditional and shall entitle him to enter only in a case of reasonable necessity in which the immigration auth ities are satisfied that such entry would not be contrary to the interests of the United States;

but this shall not be deemed to supersede the provisions of Executive Order 8429, dated June 5, 1940 concerning the documentation of seamen.

(6) The period of validity of a permit to enter or a permit to depart, issued to an alien, may be terminated by the permit-issuing authority or by the Secretary of State at any time prior to the entry or departure of the alien, provided the permit-issuing authority or the Secretary of State is satisfied that the entry or departure of the alien would be prejudicial to the interests of the United States which it was the purpose of the above-mentioned acts to safeguard.

(7) Except as provided herein or by rules and regulations prescribed hereunder, the provisions of this proclamation and the rules and regulations issued in pursuance hereof shall be in addition to, and shall not be held to repeal, modify, suspend, or supersede any proclamation, rule, regulation, or order heretofore issued and now in effect under the general statutes relating to the immigration of aliens into the United States; and compliance with the provisions of this proclamation or of any rule or regulation which may hereafter be issued in pursuance of the act of May 22, 1918, as amended by the act of June 21, 1941, shall not be considered as exempting any individual from the duty of complying with the provisions of any statute, proclamation, rule, regulation, or order heretofore issued and now in effect.

(8) I direct all departments and agencies of the Government to cooperate with the Secretary of State in the execution of his authority under this proclamation and any subsequent proclamation, rule, regulation, or order promulgated

in pursuance hereof. They shall upon request make available to the Secretary of State for that purpose the services of their respective officials and agents. I enjoin upon all officers of the United States charged with the execution of the laws thereof the utmost diligence in preventing violations of the act of May 22, 1918, as amended by the act of June 21, 1941, and in bringing to trial and punishment any persons who shall have violated any provisions of such acts.

(9) Paragraph 6, part I, of Executive Order 8766, issued June 3, 1941, is hereby superseded by the provisions of this proclamation and such regulations as may be prescribed hereunder.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the city of Washington this 14th day of November in the year of our Lord nineteen hundred and forty-one, and of the Independence of the United States of America the one hundred and sixty-sixth.

[SEAL]

By the President: FRANKLIN D. ROOSEVELT

CORDELL HULL,
Secretary of State.

Proclamation No. 2714

(12 F. R. 1)

CESSATION OF HOSTILITIES OF WORLD WAR II

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

With God's help this nation and our allies, through sacrifice and devotion, courage and perseverance, wrung final and unconditional surrender from our enemies. Thereafter, we, together with the other United Nations, set about building a world in which justice shall replace force. With spirit, through faith, with a determination that there shall be no more wars of aggression calculated to enslave the peoples of the world and destroy their civilization, and with the guidance of Almighty Providence great gains have been made in translating military victory into permanent peace. Although a state of war still exists, it is at this time possible to declare, and I find it to be in the public interest to declare, that hostilities have terminated.

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do hereby proclaim the cessation of hostilities of World War II, effective twelve o'clock noon, December 31, 1946.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this 31st day of December in the year of our Lord nineteen hundred and forty-six,

and of the Independence of the United States of America the one hundred and seventy-first.

[SEAL]

By the President: HARRY S. TRUMAN.

JAMES F. BYRNES,
The Secretary of State.

Code of Federal Regulations (C. F. R)

§175.53 TITLE 8—ALIENS AND NATIONALITY

§175.53 *Classes of aliens whose entry is deemed to be prejudicial to the public interest.* The entry of an alien who is within one of the following categories shall be deemed to be prejudicial to the interests of the United States for the purpose of §§175.41 to 175.63, inclusive:

(a) Any alien who belongs to one of the classes specified in the act of October 16, 1918, as amended. (40 Stat. 1012, 41 Stat. 1008-9, 54 Stat. 673; 8 U. S. C. 137)

(b) Any alien who is a member of, affiliated with, or may be active in the United States in connection with or on behalf of a political organization associated with or carrying out policies of any foreign government opposed to the measures adopted by the Government of the United States in the public interest, or in the interest of national defense, or in the interest of the common defense of the countries of the Western Hemisphere, or in the prosecution of the war.

(c) Any alien in possession of, or seeking to procure, unauthorized secret information concerning the plans, preparations, equipment, or establishments for the national defense of, or the prosecution of the war by, the United States.

(d) Any alien engaged in activities designed to obstruct, impede, retard, delay, or counteract the effectiveness of the measures adopted by the Government of the United States for the defense of the United States or for the defense of any other country, or the prosecution of the war.

(e) Any alien engaged in activities designed to obstruct, impede, retard, delay, or counteract the effectiveness of any plans made or steps taken by any country of the Western Hemisphere in the interest of the common defense of the countries of such Hemisphere.

(f) Any alien engaged in organizing, teaching, advocating, or directing any rebellion, insurrection, or violent uprising against the United States.

(g) Any alien engaged in a plot or plan to destroy materials, or sources thereof, vital to the defense of, or the prosecution of the war by, the United States, or to the effectiveness of the measures adopted by the United States for the defense of any other country.

(h) Any alien whose admission would endanger the public safety, as provided in any Executive order issued in pursuance of the act of Congress approved June 20, 1941 (ch. 209, 55 Stat. 252; 22 U. S. C., Sup., 228, 229).

(i) Any alien enemy: *Provided*, That this excluding provision shall not apply to aliens who

(1) Present valid permits to enter issued on or after November 14, 1941, or are exempted under these regulations from presenting permits to enter and are found to be otherwise admissible under §§ 175.41 to 175.63, inclusive; or

(2) Before September 1, 1939, became and still are citizens or subjects of any foreign country at war with Japan and who have not, since September 1, 1939, and before May 8, 1945, returned to any enemy or enemy-controlled territory; or

(3) Are under 14 years of age; or

(4) Are excepted from the excluding provisions of this subsection in the discretion of the permit-issuing authority or of the Secretary of State.

(j) Any alien found to be, or charged with being, a war criminal by the appropriate authorities of the United States or one of its co-belligerents, or an alien who has been guilty of, or who has advocated or acquiesced in activities or conduct contrary to civilization and human decency on behalf of the Axis countries during the present World War.

(k) Any alien who is not within one or more of the classes defined in paragraphs (a) to (j), inclusive, but in whose case circumstances of a similar character may be found to exist, which render the alien's admission prejudicial to the interests of the United States, which it was the purpose of the act of June 21, 1941 (55 Stat. 252; 22 U. S. C., Sup., 223) to safeguard.

§ 175.54 *Aliens leaving close relatives in certain foreign countries.* The fact that a spouse, or a relative of the first degree of consanguinity, with whom an applicant has main-

tained close family ties, remains abroad in any country, or in territory under the direct or indirect control of any country, the government of which is found by the Secretary of State to have adopted measures or policies contrary to the measures or policies adopted by the Government of the United States in the interest of national or international security, may be considered with other evidence in determining whether such applicant may be granted a permit to enter or whether the entry of such applicant should be denied upon the ground that the applicant is within one or more of the categories set forth in § 175.53.

§ 175.55 *Permission to enter the Canal Zone, Guam, American Samoa, and the Philippine Islands.* In addition to the classes of aliens prohibited from entering the United States under the provisions of this chapter, the chief executive officers of the Canal Zone, Guam, American Samoa, and the Philippine Islands are authorized to prescribe, with the approval of the Secretary of State and the Attorney General, additional prohibited classes for the areas under their jurisdiction, and such officers are authorized to issue under the same conditions such regulations as they may deem to be necessary to carry out the provisions of this chapter, including any modifications of a substantive or procedural character.

CROSS REFERENCES: For regulations relating to the control of aliens entering the Canal Zone, issued by the Governor of the Panama Canal, approved by the Secretary of State and by the Attorney General, see Title 35, CFR, 1945, Supp., Part 30.

§ 175.56 *Aliens traveling through areas of military operations or occupation.* In addition to all other applicable

restrictions and requirements, in the case of an alien who desires to proceed to the United States and who intends to proceed thereafter to or through any area designated as an area of active military operations or occupation, application shall be made for any military permit required for travel to or through such area. Such application must be approved before a permit to enter is granted.

§ 175.57 *Entry not permitted in special cases.* (a) Any alien, even though in possession of a permit to enter, or exempted under §§ 175.41 to 175.63, inclusive, from obtaining a permit to enter, may be excluded temporarily if at the time he applies for admission at a port of entry it appears that he is or may be excludable under one of the categories set forth in § 175.53. The official excluding the alien shall immediately report the facts to the head of his department, who will communicate such report to the Secretary of State. Any alien so temporarily excluded by an official of the Department of Justice shall not be admitted and shall be excluded and deported unless the Attorney General, after consultation with the Secretary of State, is satisfied that the admission of the alien would not be prejudicial to the interests of the United States. Any alien so temporarily excluded by any other official shall not be admitted and shall be excluded and deported unless the Secretary of State is satisfied that the admission of the alien would not be prejudicial to the interests of the United States.

(b) In the case of an alien temporarily excluded by an official of the Department of Justice on the ground that he is, or may be excludable under one or more of the categories set forth in § 175.53, no hearing by a board of special in-

quiry shall be held until after the case is reported to the Attorney General and such a hearing is directed by the Attorney General or his representative. In any special case the alien may be denied a hearing before a board of special inquiry and an appeal from the decision of that board if the Attorney General determines that he is excludable under one of the categories set forth in § 175.53 on the basis of information of a confidential nature, the disclosure of which would be prejudicial to the public interest.

APPENDIX II

Order

RECENT DECISION OF JUDGE HOLLAND, FLORIDA, INTERPRETING 8 C. F. R. 175, 57.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF FLORIDA,

MIAMI DIVISION.

No. 2712-M—Civil

In the Matter of the Application of
JOHN IVAN VISIC

For a writ of Habeas Corpus:

FRANCIS J. H. DEVER, Officer in Charge, Miami Office—Immigration and Naturalization Service,
Respondent.

This case is before the Court on the Petitioner's motion for a Better Statement.

The Federal Regulation Part 175.57, Title 8, Code of Federal Regulations, does not justify the Attorney General to make the order contained in the return to the order to show cause. The Presidential Proclamation No. 2523 of November 14, 1941, requires the order to be made by the Secretary of State. The concurrence of the Attorney General in rules and regulations prescribed by the Secretary of

State, does not justify the action of the Attorney General under the said Regulation 175.57.

The motion is granted. Ten days are allowed for compliance.

DONE AND ORDERED at Miami, Florida, this 24th day of November, 1948.

JOHN W. HOLLAND,
United States District Judge.

Final Judgment and Order

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF FLORIDA,

MIAMI DIVISION.

2712-M—Civil

In the Matter of the Application of
JOHN IVAN VISIC

For a Writ of Habeas Corpus:

FRANCIS J. H. DEVER, Officer in Charge, Miami Office, Immigration and Naturalization Service,

Respondent.

The above cause coming to be heard before me in open court and petitioner having appeared by his attorneys and respondent having appeared in person and by his attorneys and petitioner's oral motion to strike respondent's motion for rehearing on petitioner's motion for better statement having been granted and respondent having declined and refused to produce the official records of the Department of Justice concerning petitioner's exclusion under Part 175.57 Title 8 Code of Federal Regulations on the ground that said records of the Department of Justice were confidential and that their production was forbidden by Department of Justice order No. 3229 of May 2, 1939 and I having issued a writ of habeas corpus and said writ having been duly served upon respondent and respondent having waived any waiting period required or permitted by statute for his response to said writ and respondent having declined to produce the

aforesaid official records relating to petitioner's exclusion on the same aforesaid grounds and respondent having proffered evidence to support and prove the allegations in his return to the order to show cause, it is hereby

ORDERED that respondent be restrained from deporting petitioner from the United States under the exclusion proceedings had under the aforesaid Part 175.53 and Part 175.57 and that such proceedings be terminated forthwith, and it is further

ORDERED that petitioner be remanded into the custody of the respondent for consideration of petitioner's application for admission to the United States in accordance with the procedure prescribed by Section 16 and Section 17 of the Immigration Act of February 5, 1917 (8 U. S. C. 152 and 153) and regulations made pursuant thereto, and it is further

ORDERED that respondent, pending final determination of petitioner's application for admission to the United States as aforestated shall release petitioner upon petitioner's furnishing bond in the sum of Five Hundred Dollars ($500.00) with good and sufficient sureties as required by law and regulation, conditioned to insure petitioner's appearance in the above proceedings in connection with his application for admission and for his appearance for deportation should that be finally ordered and further conditioned that respondent shall during the pendency of those proceedings remain within the confines of the Southern Judicial District of Florida.

DONE AND ORDERED in Chambers of United States Court House in the City of Miami, County of Dade and State of Florida this 7th day of December, a.D. 1948.

JOHN W. HOLLAND,
U. S. District Judge.

OPINION OF THE ATTORNEY GENERAL OF THE UNITED STATES.

NATURALIZATION. PROOF OF ENTRY FOR PERMANENT RESIDENCE.

Under section 312 of the Nationality Act of 1940, proof of legal entry for permanent residence is a condition precedent to naturalization of an alien spouse of an American citizen who is abroad in the employment of the Government.

MAY 26, 1941.

The Secretary of State.

MY DEAR MR. SECRETARY: Reference is made to your communication of April 23, 1941, requesting my opinion "whether an alien spouse of a citizen of the United States who is abroad in the employment of the Government of the United States is required under section 312 of the Nationality Act of 1940 to prove that he or she legally entered the United States for permanent residence under the immigration laws of the United States as a condition precedent to naturalization." The Nationality Act of 1940 (Public, No. 853, 76th Cong.) provides in section 301 (d) that "a person may be naturalized as a citizen of the United States in the manner and under the conditions prescribed in this act, and not otherwise." Other provisions of the act specify certain general requirements with which all aliens not exempt therefrom must comply as a prerequisite to naturalization. Among these general requirements are (1) the filing in the prescribed manner of a declaration of intention to become a citizen of the United States, (2) the filing in a court of competent jurisdiction of a petition for naturalization, (3) proof of legal entry in the United States for permanent residence, and (4) proof of prescribed periods of residence within the United States and within the jurisdiction of the court before which the naturalization proceeding is pending. See section 332, paragraphs 9, 11, 13, and 14.

Section 312 of the act reads in pertinent part:

"An alien, whose spouse is (1) a citizen of the United States, (2) in the employment of the Government of the United States, * * * and (3) regularly stationed abroad in such employment, and who is (1) in the United States at the time of naturalization, and (2) declares before the naturalization court in good faith an intention to take up residence within the United States immediately upon termination of such employment abroad of the citizen spouse, *may be naturalized upon compliance with all requirements of the naturalization laws, with the following exceptions:*

"(a) No declaration of intention shall be required; and

"(b) No prior residence within the United States or within the jurisdiction of the naturalization court or proof thereof shall be required." (Italics supplied.)

Section 312 is one of seventeen sections of the Nationality Act of 1940 dealing with the naturalization of special classes of aliens. Each of these sections prescribes how persons mentioned in it may be naturalized, expressly exempting them, wholly or in part, from compliance with one or more of the general requirements for naturalization.

Some of these sections expressly exempt persons named in them from the requirement, among others, to prove legal entry in the United States for permanent residence. For example, section 317 expressly exempts persons mentioned in it from that requirement and also from the requirements (1) to file declaration of intention to become a citizen and (2) to prove the statutory periods of residence within the United States and within the jurisdiction of the court. Section 312 also expressly exempts persons named in it from the two requirements last mentioned but does not so exempt them from the other. It is believed that if the Congress had

intended to extend that exemption to them it would have done this also by express language. See *United States* v. *Manzi*, 276 U. S. 463.

Of significance, also, is the fact that alien spouses of citizens other than those mentioned in section 312 are not exempted from the requirement here in question. The other exemptions in section 312 being expressly granted, it is my opinion that the implied grant to spouses of one class of citizens of an exemption not granted to those of other classes should not be read into the section unless the purpose to grant it appears by clear implication. I find no such implication.

Attention is also invited to the regulations issued under the statute by this Department on January 9, 1941 (see Federal Register, issue of January 11, 1941, pp. 230 *et seq.*), which show an administrative interpretation in accord with the above view. Section 363.4 of these regulations in naming the classes of persons who may be naturalized without filing certificates of entry in the United States for permanent residence does not include persons mentioned in section 312.

For the reasons given, it is my opinion that an alien spouse of a citizen of the United States who is abroad in the employment of the Government of the United States is required to prove that he or she legally entered the United States for permanent residence under the immigration laws of the United States as a condition precedent to naturalization. It is not necessary, of course, that the entry be for *immediate* permanent residence, since the statute permits naturalization upon a declaration made in good faith of an "intention to take up residence within the United States immediately upon termination of such employment abroad of the citizen spouse."

Respectfully,

ROBERT H. JACKSON.